

**BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW  
COMMISSION**

POWELL PROPERTIES &  
MANAGEMENT LLC  
APPELLANT,

V.

LANCASTER COUNTY  
BOARD OF EQUALIZATION,  
APPELLEE.

CASE NO: 23C 1118

DECISION AND ORDER  
AFFIRMING THE DECISION  
OF THE LANCASTER  
COUNTY BOARD OF  
EQUALIZATION

**I. BACKGROUND**

1. The Subject Property is an improved commercial parcel in Lancaster County, parcel number 05-21-304-007-000.
2. The Lancaster County Assessor (the County Assessor) assessed the Subject Property at \$922,400 for tax year 2023.
3. Powell Properties & Management LLC (the Taxpayer) protested this value to the Lancaster County Board of Equalization (the County Board).
4. The County Board determined that the taxable value of the Subject Property was \$922,400 for tax year 2023.
5. The Taxpayer appealed the determination of the County Board to the Tax Equalization and Review Commission (the Commission).
6. A Single Commissioner hearing was held on November 5, 2024, at the Tax Equalization and Review Commission Hearing Room, Nebraska State Office Building, Lincoln, Nebraska, before Commissioner Jackie S. Russell.
7. Dawn and Tim Powell were present at the hearing for the Taxpayer.
8. Matt Cartwright (Appraiser) was present for the County Board.

## II. APPLICABLE LAW

9. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.<sup>1</sup>
10. The Commission's review of a determination of the County Board of Equalization is de novo.<sup>2</sup>
11. When considering an appeal, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."<sup>3</sup> That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."<sup>4</sup>
12. The order, decision, determination, or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.<sup>5</sup>
13. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.<sup>6</sup>

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<sup>1</sup> Neb. Rev. Stat. § 77-1301(1) (Cum. Supp. 2020).

<sup>2</sup> See Neb. Rev. Stat. § 77-5016(8) (Reissue 2018), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019, 759 N.W.2d 464, 473 (2009).

<sup>3</sup> *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008).

<sup>4</sup> *Id.* at 283-84.

<sup>5</sup> Neb. Rev. Stat. § 77-5016(9) (Reissue 2018).

<sup>6</sup> *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 174-75, 645 N.W.2d 821, 826 (2002).

14. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.<sup>7</sup>
15. The Commission's Decision and Order shall include findings of fact and conclusions of law.<sup>8</sup>

### III. FINDINGS OF FACT & CONCLUSIONS OF LAW

16. The Subject Property is a multi-family apartment complex with 12 living units consisting of two bedrooms and one bathroom each, in the village of Malcom, Nebraska, which sits approximately 12 miles NW of Lincoln, Nebraska, in Lancaster County.
17. The Taxpayers stated that due to the location of the village of Malcom, the lack of local amenities such as a grocery store or gas station, and the alleged inability to raise rents at the same rate that Lincoln's rental rates increase, the valuation for the Subject Property is arbitrary and unreasonable.
18. The Taxpayers provided data sheets for three properties printed from the Seward County Assessor's website, as well as the Saunders County Assessor's website, to compare to the Subject Property. Looking at only the assessed values, the Taxpayers opined the properties submitted were located in comparable commuter villages and therefore, should be similarly valued.
19. Comparable properties share similar use (residential, commercial industrial, or agricultural), physical characteristics (size, shape, and topography), and location.<sup>9</sup>
20. After the Commission's review of the property data sheets provided for comparison, the Taxpayer has not demonstrated

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<sup>7</sup> *Josten-Wilbert Vault Co. v. Bd. of Equal. for Buffalo Cty.*, 179 Neb. 415, 418, 138 N.W.2d 641, 643 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. Cty. Bd. of Equal. of York Cty.*, 209 Neb. 465, 468, 308 N.W.2d 515, 518 (1981) (determination of equalized taxable value).

<sup>8</sup> Neb. Rev. Stat. § 77-5018(1) (Reissue 2018).

<sup>9</sup> See, International Association of Assessing Officers, *Property Assessment Valuation*, at 169-79 (3rd ed. 2010).

comparability in the properties submitted to the Subject Property, or that a property located in a similar commuter type location within another county should be valued similarly to those located in a commuter village within Lancaster County.

21. “Comparing assessed values of other properties with the subject property to determine actual value has the same inherent weakness as comparing sales of other properties with the subject property. The properties must be truly comparable.”<sup>10</sup>
22. The Taxpayers provided an appraisal report written in April of 2022 with a retrospective valuation date of January 1, 2021, by Steven J. Medill of Capital Appraisal Company, LLC, to support a requested valuation reduction for 2023.
23. The Medill report considered two approaches to value as indicative of the 2021 market value for the Subject Property: the sales comparison approach and the income approach.
24. The Taxpayer has not demonstrated that the information provided in the Medill report still holds relevancy for the Subject Property in setting the 2023 valuation due to fluctuations in the market. The Medill report does not show recent sales comparable to the Subject Property or income and expense information relevant to 2022, therefore, the Commission gives the report little weight for the 2023 valuation.
25. The Taxpayers stated that the rental rates had been increased since the Medill report was written, from \$595 per month to \$625 per month however, expenses for 2022 were not given.
26. The Appraiser attested that the Subject Property is considered a part of the same market area as multi-family units located within Lancaster County.
27. The Appraiser attested that the Subject Property value is based on information extracted from the market from comparable properties and used in an income approach to value based on the

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<sup>10</sup> *DeBruce Grain, Inc. v. Otoe County Bd. of Equalization*, 7 Neb. App. 688, 697, 584 N.W.2d 837, 843 (1998).

property's Investment Class rating found on page 6 of the submitted Property Record File (PRF).

28. The Appraiser attested that all properties in the Model 74, Investment Class 4, are valued with the same coefficients to create an Income Approach to value using professionally accepted mass appraisal methods.
29. "For properties with reported figures the assessor has two choices: (1) use the reported figures for instances in which they have been verified or are consistent with estimated (typical) figures, or (2) consistently use estimated figures in all cases."<sup>11</sup>
30. Through the Appraiser's testimony, the Commission finds the valuation process is consistent in using typical figures extracted from recent property sales from the appropriate sales study period of October 1, 2020, to September 30, 2022,<sup>12</sup> in valuing all multi-family properties within the same investment class and model.
31. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
32. The Taxpayer has not adduced clear and convincing evidence that the determination of the County Board is arbitrary or unreasonable and the decision of the County Board should be affirmed.

#### **IV. ORDER**

##### **IT IS ORDERED THAT:**

1. The decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2023 is affirmed.
2. The taxable value of the Subject Property for tax year 2023 is:

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<sup>11</sup> International Association of Assessing Officers, *Fundamentals of Mass Appraisal* 341 (2011).

<sup>12</sup> 350 Neb. Admin. Code, ch. 17, § 003.05A (7/5/2017).

Land	\$ 78,000
<u>Improvements</u>	<u>\$844,400</u>
Total	\$922,400

3. This Decision and Order, if no further action is taken, shall be certified to the Lancaster County Treasurer and the Lancaster County Assessor, pursuant to Neb. Rev. Stat. § 77-5018 (Reissue 2018).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2023.
7. This Decision and Order is effective on November 25, 2024.

Signed and Sealed: November 25, 2024



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Jackie S. Russell, Commissioner